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OFFICE OF PETITIONS

In re Application of :
Jones, et al. :
Application No. 10/755,039 : DECISION ON PETITION
Filed: 9 January, 2004 :
Attorney Docket No. 47171-00354USD1 :

This is a decision on the petition filed (with fee) on 17 June, 2004, under 37 C.F.R. §1.53 to accord a filing date of 9 January, 2004, to “Applicant’s unintentionally mislabeled FIGURE 1z.”

The petition is **DISMISSED**.

BACKGROUND

The application was deposited with the Office on 9 January, 2004.

On 13 April, 2004, the Office mailed a Notice of Omitted Items in a Nonprovisional Application (the Notice), indicating, *inter alia*, that:

- a filing date had been granted to the application;
- however, “Figure(s) 1y described in the specification” appeared to have been omitted from the application as deposited.

The Notice reminded Petitioner that the alternatives available under the Rules of Practice were to:

- submit evidence of actual deposit of the apparently omitted Figure 1y at the time the application was deposited with the Office; or

- submit the omitted Figure 1y and accept the date of that submission as the filing date of the application; or
- not respond to the Notice of Omitted Items and accept the application as filed with the then-effective date as a filing date.

Petitioner instead chose to respond that Figure 1y was mislabeled as Figure 1z, which figure was present on filing, and Petitioner submitted an additional drawing.

(Rather than respond to the Notice of Omitted Items with a petition, Petitioner should have submitted a preliminary amendment correcting either the mis-labeled drawing or the drawing (mis)identification in the specification.)

On or about 17 June, 2004, the Office accorded a 10 June, 2004, filing date to this application—rather than the previously accorded 9 January, 2004, filing date—and that change was in response to Petitioner’s submission of a “corrected drawing” identified as “Fig. 1y.”

ANALYSIS

A review of the application papers reveals that:

- the application was filed and received in the Office on 9 January, 2004, and that at the deposit Figure 1y was missing from the application; and
- a drawing identified as Figure 1z was present upon deposit and filing, and received a filing date of 9 January, 2004.

Thus, the Notice mailed on 13 April, 2004, appears to have been correct in stating that Figure 1y as described in the specification had been omitted. Therefore, the Notice was properly included and mailed, and it will not be withdrawn.

Petitioner stated in the petition that the drawing was mislabeled as “Fig. 1z,” rather than “Fig. 1y.”

However, Petitioner then submitted a new drawing—this one with Figure 1z with the z marked over with an “x” and a “y” substituted in its place.¹

¹ If Petitioner wished to amend the drawing labeled as Fig. 1z, he could have marked out the expression “Fig. 1 z” in whole, and substituted clearly with “Fig. 1 y”—accompanied by a statement of a preliminary amendment requesting entry of the amended drawing.

It appears from Office records that on or about 17 June, 2004, the Office interpreted Petitioner's response to mean that he wished the omitted drawing to be part submitted as an element of the application and was willing to accept a later filing date than that of 9 January, 2004. With that, the Office accorded a 10 June, 2004, filing date to this application, and that change was in response to Petitioner's submission of a "corrected drawing" identified as "Fig. 1y."

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.53 is dismissed, and the petition fee previously charged will not be refunded because the instant petition was occasioned by the acknowledged error of the Petitioner and not that of the Office.

The file is released to OIPE with instructions to:

- accord to the instant application a filing date of 9 January, 2004, using only the papers deposited on that date; and
- issue a corrected filing receipt, again reflecting only the paper deposited on 9 January, 2004.

The papers identified as "Request for Approval of Drawing Correction" and the drawing submitted with it on 17 June, 2004 (over a 10 June, 2004, certificate of mailing), will not be entered.

Should Petitioner wish to correct the drawing previously identified as Figure 1z, Petitioner may file a preliminary amendment in the form and substance of that correction, and request of the Examiner entry of that amendment.

The application is being forwarded to OIPE for such processing as is necessary consistent with this decision. Thereafter the file will be forwarded to Technology Center 2600 for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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